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AUTHOR Zarefsky, David
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ABSTRACT

This paper discusses five theoretical concepts in general and two theoretical models in particular that are involved in forensics. The five concepts are: (1) causation, an inquiry into the reasons for ongoing processes or problems; (2) inherency, the division of a universe into its necessary features and its accidental features; (3) presumption, a concept which functions against the proposition; (4) burden of proof, the converse or presumption; and (5) prima facie case, a case whose form consists of a sequential examination of the "stock issues." The theoretical models discussed are the legislative model and the truth-testing model. (TS)

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CHANGING CONCEPTS IN FORENSICS

By

David Zarefsky
NORTHWESTERN UNIVERSITY

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David Zarefsky
Northwestern University

I begin with the assumption that forensics, the study of communication from an argumentative perspective, involves both descriptive and normative inquiry. Forensics involves both the study of how people do make arguments and how they could make them more critically and effectively. Accordingly, its concepts and constructs should permit study of argumentation as it occurs in the "real world." But current social patterns of argument should not be the fixed and unvarying standard against which to measure theory.

Basic Theoretical Model

Some changes in the last five years have been for the better. Instead of adhering to prescriptions the rationale for which is unknown, or applying mechanically the "stock issues" pattern of analysis, students and teachers give more attention to a theoretical model upon which practices are based. There also is a greater recognition of the influence of one's choice of models on many of his beliefs about specific theories and practices. What follows naturally from one model might be reprehensible from the vantage point of another.

Over the past few years, the most popular theoretical model has been the legislative decision-making process, with its goal being the "comparison of policy systems." This trend is unfortunate for several reasons: (1) The legislature is only one setting in which argumentation occurs, and is not a paradigm for all types of argument. In particular, the legislative model de-emphasizes argument about fundamental values or ends, relative to its concern with means. (2) Many of the components of legislative decision-making -- e.g., logrolling, coalition building and the process of amendment --

are not present in forensics. (3) In the legislative model, decisions are made and implemented by actors within the system, whereas in forensics the dispute is presented and adjudicated by parties outside the system. Consequently, the disputants should inquire about the actors' motives, since they lack the power to control them. But the legislative model slights such questions. (4) As practiced, the legislative model leads to a double standard -- comparing one system as it exists at one point in time with another as a theoretical ideal. This double standard leads to a pro-affirmative bias.

I prefer the theoretical model of the intelligent citizen trying to determine the truth value of a proposition. According to this model, argumentation is a truth-testing device analogous to a science in its rigor and appropriate for questions which science cannot answer. Four assumptions help to explain this model: (A) Much of our knowledge and belief -- namely, all that requires value judgment or prediction -- is not susceptible to empirical verification. (B) What we do not know as a result of empirical verification, we know as a result of rhetoric. (C) Consensual validation is the standard for theoretical knowledge, yet there is no inherent guarantee that the consensus is sufficiently critical to warrant accepting a judgment with confidence. (D) The conventions of argumentation provide the rigor, analogous to scientific method, which permits us confidently to accept judgments which have survived the best test to which we can put them.

Although this model is far more comfortable for me than is the model of "policy comparison," I hasten to add that it, too, is only one model. In general, I am bothered by the apparent desire to establish any one model as the new orthodoxy and to judge debates only from one perspective. I would like to see greater recognition of, and tolerance for, diversity of perspective.

Causation

Because inherency is primarily a causal question, the topics of causation and inherency are intimately related. I believe that the question, "why?" has been slighted in the last few years. The prevailing tendency has been to recognize the existence of a situation and then to ask, "How can we change it to gain an advantage?" But without knowing why the situation exists, this analysis is incomplete because the debaters cannot be assured of affecting the motives of the actors within the system. In some instances, these motives may thwart the effectiveness of change; in others, they may make it unnecessary.

Two caveats are in order. First, the causal question is not an inquiry into the reasons for the existence of conditions in the past. Presumably, debaters are powerless to change the course of history. Rather, it is an inquiry into the reasons for ongoing processes or problems. Second, causation is not a physical property, nor is it unitary. One does not ask, "Does A lead to B which leads to C?" in a mechanistic sense. Rather, causation is a matter of psychological entailment. One seeks to determine whether a particular system contains enough "facilitating conditions" for a given result that one might expect the result to follow. Causation is proved in a rhetorical sense.

Inherency

If the past few years are any indication, inherency will become among the most neglected theoretical concepts, and there will be adverse consequences for the rationality of the argumentative process. If there is a reason for these trends, it may lie in the perceived inadequacy of traditional definitions of inherency, such as the ambiguity of the term "structural change" or the assumption that a change in degree is fundamentally different from a change in

kind. Yet the concept is essential to debate, for it reconciles the presumed rationality of people with the apparent irrationality of their actions. It asks the question, "Why would good and just people tolerate the continued existence of harms?" Since the concept is so crucial, it should be reformulated rather than abandoned.

I prefer a conception of inherency as two operations: (1) the division of a universe into its necessary (core) features and its accidental (peripheral) features -- a division which is rhetorical and depends upon the adherence of an audience, since there is no objective means for making it; (2) establishing a causal relationship, as explained above, between the apparent harm or advantage and the necessary features.

Two corollary explanations may be helpful. I believe that the core ultimately will consist of motives, since they stimulate statutes, administrative decisions, and other actions sometimes thought to constitute the core. Hence all inherency ultimately is attitudinal. Second, since a specific proposition is being tested, the possible motives for examination are the proposition and the non-proposition. The latter universe does not embrace a specific alternative to the proposition but could encompass anything short of, or different from, it. The reasons for this claim are discussed under "Presumption." Here its importance is to establish the validity of "justification" arguments. These arguments seek to establish that no reason has been given to adopt a specific proposition as opposed to some other hypothetical alternative. The "conditional counterplan" is merely another way of presenting the justification argument, which is properly subsumed under the topic of inherency.

Presumption

Whately's statement that "there is a presumption in favor of every existing institution" has been taken out of context, and the counter-presumptions which he also described have been forgotten. It is not surprising, therefore, that presumption has diminished in importance as debates less often have turned on the question of change vs. no change and more often have turned on the question of the type of change most likely to produce desired effects.

The other major reason for the decline of presumption over the last few years relates to its major function in debates. Aside from determining who must speak first and providing a guide for decision-making in the unlikely event of a tie, presumption served to identify some residual, unquantifiable advantage to the present system. This advantage resulted from familiarity with the present system, as apposed to ignorance about the affirmative plan. Overcoming this advantage was the reason for the affirmative's initially proving significance. Now, however, significance is more commonly a net obligation -- at the end of the debate the advantages must exceed the disadvantages. Hence there seems to be little need for the concept of presumption.

These two problems indicate the need for re-examining the meaning and function of presumption, not for weakening or abandoning it. Without the concept, I believe there are insufficient checks against capricious commitment to a proposition. Accordingly, presumption should be placed against the resolution -- not against change, but against the specific proposition being tested. If the proposition survives this rigorous test, then it should be worthy of acceptance with confidence. It is appropriate that presumption be against the proposition, since acceptance implies a commitment whereas rejection leaves open all other alternatives.

I hasten to add that my stipulation of presumption is normative. In "real world" controversies presumption will be located according to the skill of the advocates in jockeying for its possession. Still, the advantage conveyed by the presumption -- assigning the burden of proof to one's opponent -- makes the concept important for descriptive as well as normative analysis.

Burden of Proof

This term is the converse of presumption. It is the ultimate responsibility for proving that the proposition is true. It rests with the affirmative and does not shift. In recent years, this term has been confused with the burden of "he who asserts must prove," the obligation of any advocate to justify his claims. Such confusion is evident, for example, in the statement that the negative has the burden of proof with respect to the disadvantages. I would propose to alleviate this confusion by substituting for "burden of proof" as I am describing it, the term, "burden of the proposition."

Prima Facie Case

Argumentation borrowed this term from the law. Traditionally, it referred to a case whose form consisted of a sequential examination of the "stock issues." Increasingly, however, we have come to realize that the form in which arguments are cast for presentation does not affect the logical or functional requirements of the advocate. Hence a prima facie case would be one which satisfied these requirements. In this conception, prima facie would be only a summary term for significance, inherency, workability, and so forth. Since the focus of attention should be on these functions anyway, and since, unlike law, forensics does not stipulate specific proof requirements for each of the obligations, no great harm would be done if the term prima facie were expunged.